

New South Wales



ANNO VICESIMO QUINTO

ELIZABETHÆ II REGINÆ

Act No. 84, 1976.

An Act to amend the Conveyancing Act, 1919. [Assented to, 2nd December, 1976.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Conveyancing Short title. (Amendment) Act, 1976".

2.

Conveyancing (Amendment).

Commence-
ment.

2. (1) This section and sections 1, 3 and 6 shall commence on the date of assent to this Act.

(2) Sections 4 and 5 shall, in their application to a provision of Schedules 1-7, commence on the day on which that provision commences.

(3) Except as provided by subsection (4), the several provisions of Schedules 1-7 shall commence on the date of assent to this Act.

(4) The several provisions of Schedule 2 (Schedule 2 (1), (8) and (9) excepted) and Schedule 3 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Schedules.

3. This Act contains the following Schedules :—

SCHEDULE 1.—AMENDMENT TO PART III OF THE CONVEYANCING ACT, 1919.

SCHEDULE 2.—AMENDMENTS TO PART VI OF THE CONVEYANCING ACT, 1919.

SCHEDULE 3.—AMENDMENTS TO PART VII OF THE CONVEYANCING ACT, 1919.

SCHEDULE 4.—AMENDMENTS TO PART XXIII OF THE CONVEYANCING ACT, 1919.

SCHEDULE 5.—AMENDMENTS TO THE CONVEYANCING ACT, 1919, BY WAY OF STATUTE LAW REVISION.

SCHEDULE 6.—AMENDMENT TO THE CONVEYANCING ACT, 1919, BY WAY OF METRIC CONVERSION.

SCHEDULE 7.—AMENDMENT TO THE REGISTRATION OF DEEDS ACT, 1897.

SCHEDULE 8.—TRANSITIONAL PROVISIONS.

Conveyancing (Amendment).

4. The Conveyancing Act, 1919, is amended in the manner set forth in Schedules 1-6. Amendment of Act No. 6, 1919.
5. The Registration of Deeds Act, 1897, is amended in the manner set forth in Schedule 7. Amendment of Act No. 22, 1897.
6. Schedule 8 has effect. Transitional provisions.

SCHEDULE 1.

Sec. 4.

AMENDMENT TO PART III OF THE CONVEYANCING ACT,
1919.

Section 38 (1A), (1B)—

After section 38 (1), insert :—

(1A) For the purposes of subsection (1), but without prejudice to any other method of signing, a deed is sufficiently signed by a person if—

- (a) by the direction and in the presence of that person the deed is signed in the name of that person by another person;
- (b) the signature is attested by a person who is not a party or signatory (except by way of attestation) to the deed; and
- (c) the person attesting the signature certifies in his attestation that he is a prescribed witness and that the signature was affixed by the direction and in the presence of the person whose signature it purports to be.

SCHEDULE

Conveyancing (Amendment).

SCHEDULE 1—*continued.*
**AMENDMENT TO PART III OF THE CONVEYANCING ACT,
1919—*continued.***

(1B) For the purposes of subsection (1) but without prejudice to any other method of signing, a deed is sufficiently signed by a person if—

- (a) that person affixes his mark to the deed;
- (b) the affixing of the mark is attested by a person who is not a party or signatory (except by way of attestation) to the deed; and
- (c) the person attesting the affixing of the mark certifies in his attestation—
 - (i) that, before the mark was affixed, he explained the nature and effect of the deed to the marksman; and
 - (ii) that he believed, at the time the mark was affixed, that the marksman understood the explanation.

Sec. 4.

SCHEDULE 2.
**AMENDMENTS TO PART VI OF THE CONVEYANCING ACT,
1919.**

(1) Section 88 (1)—

Omit "An easement", insert instead "Except to the extent that this Division otherwise provides, an easement".

SCHEDULE

Conveyancing (Amendment).

SCHEDULE 2—*continued.*

**AMENDMENTS TO PART VI OF THE CONVEYANCING ACT,
1919—*continued.***

(2) Section 88B (1)—

Omit “, ‘road’ and ‘subdivision’”, insert instead “and ‘road’”.

(3) Section 88B (2)—

Omit the subsection, insert instead :—

(2) A plan shall not be lodged in the office of the Registrar-General for registration or recording under section 196 unless it indicates in the manner prescribed in respect of the plan by regulations made under this Act or the Real Property Act, 1900—

- (a) what easements, if any, are intended to be created—
 - (i) burdening land comprised in the plan and appurtenant to any existing roads shown on the plan; and
 - (ii) appurtenant to any roads to be vested upon registration of the plan;
- (b) what easements, if any, referred to in section 88A (1) are intended to be created burdening land comprised in the plan and in whose favour those easements are intended to be created;
- (c) what other easements, if any, are intended to be created appurtenant to or burdening land comprised in the plan; and
- (d) what restrictions as to user, if any, are intended to be created benefiting or burdening land comprised in the plan.

SCHEDULE

Conveyancing (Amendment).

SCHEDULE 2—*continued.*
**AMENDMENTS TO PART VI OF THE CONVEYANCING ACT,
1919—*continued.***
(4) Section 88B (3)—

Omit “On registration in the office of the Registrar-General of a plan of subdivision approved by the council after the commencement of the Local Government and Conveyancing (Amendment) Act, 1964, and”, insert instead “On registration or recording under section 196 of a plan”.

(5) Section 88B (3) (c)—

After “user”, insert “(not being a restriction as to user of the type that may be imposed under section 88E)”.

(6) Section 88B (3) (c) (iii)—

Omit “thereby.”, insert instead “thereby; and”.

(7) Section 88B (3) (d)—

After section 88B (3) (c), insert :—

- (d) any restriction as to user that is of the type that may be imposed under section 88E and is so indicated as intended to be created takes effect as if it had been so imposed.

(8) Section 88D (1), definition of “prescribed authority”—

Omit the definition, insert instead :—

“prescribed authority” means—

- (a) the Crown;
(b) a public or local authority constituted by an Act; or

SCHEDULE

Conveyancing (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART VI OF THE CONVEYANCING ACT,
1919—*continued.*

(c) a corporation prescribed for the purposes of this section;

(9) Section 88D (13), (14), (15)—

After section 88D (12), insert :—

(13) Subject to subsection (14), a restriction as to the user of land imposed under subsection (2) may be varied by an agreement in writing between the prescribed authority specified in the order by which the restriction was imposed and the person or persons against whom, at the time of the recording or registration referred to in subsection (14), the restriction is enforceable.

(14) An agreement referred to in subsection (13) does not take effect unless—

- (a) where the land to which the restriction relates is under the provisions of the Real Property Act, 1900—the agreement is recorded under subsection (15); or
- (b) in any other case—the agreement is by deed registered under the Registration of Deeds Act, 1897.

(15) Where an agreement referred to in subsection (13)—

- (a) relates to a restriction as to the user of land under the provisions of the Real Property Act, 1900;
- (b) is in a form approved by the Registrar-General; and

SCHEDULE

Conveyancing (Amendment).

SCHEDULE 2—continued.
**AMENDMENTS TO PART VI OF THE CONVEYANCING ACT,
1919—continued.**

(c) is lodged in the office of the Registrar-General,

the Registrar-General shall appropriately record the agreement in the Register kept under that Act.

(10) Section 88E—

After section 88D, insert :—

Prescribed
authority
may enforce
certain
restrictions
as to user.

88E. (1) In this section “prescribed authority” means—

- (a) the Crown;
- (b) a public or local authority constituted by an Act; or
- (c) a corporation prescribed for the purposes of this section.

(2) A prescribed authority may, in accordance with this section, impose a restriction as to the user of land not vested in the authority, the restriction to be enforceable by that authority whether or not the benefit of the restriction is annexed to other land.

(3) A restriction referred to in subsection (2) may be imposed in relation to land under the provisions of the Real Property Act, 1900, by a memorandum of restriction in the form approved under that Act that—

- (a) specifies the prescribed authority that is imposing the restriction;

SCHEDULE

Conveyancing (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART VI OF THE CONVEYANCING ACT,
1919—*continued.*

- (b) is executed by that prescribed authority, by the registered proprietor of the land and by each other person who has a registered estate or interest in the land and is to be bound by the restriction; and
- (c) is lodged in the office of the Registrar-General,

and such a restriction takes effect when it is recorded in the Register kept under that Act.

(4) A restriction referred to in subsection (2) may be imposed in relation to land that is not under the provisions of the Real Property Act, 1900, by a deed that—

- (a) is expressed to be made pursuant to this section;
- (b) specifies the prescribed authority that is imposing the restriction; and
- (c) is executed by that prescribed authority, by the owner of the land and by each other person who is seised or possessed of any estate or interest in the land and is to be bound by the restriction,

and such a restriction takes effect when the deed by which it is imposed is registered under the Registration of Deeds Act, 1897.

SCHEDULE

Conveyancing (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART VI OF THE CONVEYANCING ACT,
1919—*continued.*

(5) Where a restriction referred to in subsection (2) takes effect, the prescribed authority that imposed the restriction may enforce it against any person who is, or claims under, a signatory to the memorandum or deed that imposed the restriction as if that person had entered into a binding covenant with that prescribed authority to observe the restriction.

(6) Where a restriction referred to in subsection (2) is recorded in the Register kept under the Real Property Act, 1900, the title of the registered proprietor of the land to which the restriction relates is, for the purposes of section 42 of that Act, subject to the restriction.

(7) A restriction imposed pursuant to this section may be released or varied—

- (a) where the land affected by the restriction is under the provisions of the Real Property Act, 1900—by a memorandum of release or a memorandum of variation, as the case may require, in the form approved under that Act and recorded in the Register kept under that Act; or
- (b) where the land so affected is not under the provisions of that Act—by a deed of release or a deed of variation, as the case may require, registered under the Registration of Deeds Act, 1897,

executed by the prescribed authority entitled to enforce the restriction and, in the case of a variation of a restriction, bearing the written consent of each person

SCHEDULE

Conveyancing (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART VI OF THE CONVEYANCING ACT,
1919—*continued.*

against whom, at the time the memorandum is recorded, or the deed registered, the restriction is enforceable.

(8) The Registrar-General shall—

- (a) upon the lodgment in his office of a memorandum of release referred to in subsection (7)—cancel the recording of the restriction in the Register kept under the Real Property Act, 1900; and
- (b) upon the lodgment in his office of a memorandum of variation so referred to—make all such recordings in that Register as are necessary to give effect to the variation.

SCHEDULE 3.

Sec. 4.

AMENDMENTS TO PART VII OF THE CONVEYANCING ACT,
1919.

(1) Section 109 (2)—

After “Act” where firstly occurring, insert “(except section 111 (5) and the provisions of section 111 relating to notice or lapse of time where default is made in the payment on the due date of any principal, interest or other money)”.

SCHEDULE

Conveyancing (Amendment).

SCHEDULE 3—*continued.*AMENDMENTS TO PART VII OF THE CONVEYANCING ACT,
1919—*continued.*

(2) Section 109 (3)—

Omit “This section”, insert instead “Subsection (1)”.

(3) Section 109 (4)—

Omit the subsection, insert instead :—

(4) This section applies to mortgages executed before, and to mortgages executed after, the commencement of Schedule 3 to the Conveyancing (Amendment) Act, 1976.

(4) Section 111 (1)—

Omit “57 and 58”, insert instead “57, 58 and 58A”.

(5) Section 111 (2), (3), (4) and (5)—

Omit section 111 (2), insert instead :—

(2) Subject to subsection (1), a mortgagee shall not exercise a power to sell the mortgaged property, whether conferred by this Act or otherwise, unless—

(a) default has been made in—

- (i) the observance of a covenant expressed or implied in the mortgage;
- (ii) the payment on the due date of the principal, interest or other money the payment of which is secured by the mortgage; or
- (iii) the payment on the due date of any part of that principal, interest or other money;

SCHEDULE

Conveyancing (Amendment).

SCHEDULE 3—*continued.*

AMENDMENTS TO PART VII OF THE CONVEYANCING ACT,
1919—*continued.*

(b) where—

- (i) the default relates to that payment;
or
- (ii) the default does not relate to that
payment and notice or lapse of time
pursuant to this section has not been
dispensed with by the mortgage
deed,

the mortgagee serves on the mortgagor, in
the manner authorised by section 170, a
written notice that complies with subsection
(3); and

(c) where such a notice is so served, the require-
ments of the notice are not complied with
within the time notified pursuant to sub-
section (3) (d).

(3) A notice referred to in subsection (2) complies
with this subsection if—

- (a) it specifies that it is a notice pursuant to
section 111 (2) (b) of the Conveyancing
Act, 1919;
- (b) it requires the mortgagor on whom it is
served—
 - (i) to observe, except in relation to any
time expressed in the covenant for
its observance, the covenant in
respect of the observance of which
he made default; or

SCHEDULE

Conveyancing (Amendment).

SCHEDULE 3—continued.
**AMENDMENTS TO PART VII OF THE CONVEYANCING ACT,
1919—continued.**

- (ii) as the case may be, to pay the principal, interest or other money in respect of the payment of which he made default;
 - (c) if the costs and expenses of the mortgagee in preparing and serving the notice are to be demanded, it requires payment of a reasonable amount for those costs and expenses and specifies the amount; and
 - (d) it notifies the mortgagor that, unless the requirements of the notice are complied with within one month after service of the notice (or, where some other period exceeding one month is limited by the mortgage for remedying the default referred to in the notice, within that other period after service of the notice) the mortgagee proposes to exercise his power of sale.
- (4) Where a notice is served under subsection (2) (b) and the requirements of the notice are complied with within the time applicable to the notice under subsection (3) (d), the default to which the notice relates shall be deemed not to have occurred.
- (5) Without prejudice to any other manner in which it may be deprived of force or effect, a covenant, agreement or condition whereby upon a default referred to in subsection (2) (a)—
- (a) the whole of the principal or other money of which the payment is secured by a mortgage becomes payable; or

SCHEDULE

Conveyancing (Amendment).

SCHEDULE 3—*continued.*

AMENDMENTS TO PART VII OF THE CONVEYANCING ACT,
1919—*continued.*

- (b) a part of that principal or other money (not being a part to which that default relates) becomes payable,

has no force or effect until the power of the mortgagee to sell the mortgaged property becomes exercisable by reason of that default.

SCHEDULE 4.

Sec. 4.

AMENDMENTS TO PART XXIII OF THE CONVEYANCING ACT,
1919.

- (1) Section 196A (3)—

Omit the subsection, insert instead :—

(3) Where land is resumed, the Crown or other authority by which the land is resumed shall forthwith—

- (a) where the resumed land is not under the provisions of the Real Property Act, 1900—send to the Registrar-General notice in the prescribed form of the resumption; or
- (b) where the resumed land is under the provisions of the Real Property Act, 1900, and the Registrar-General has not recorded the resumption in the Register kept under that Act—lodge with the Registrar-General a resumption application within the meaning of that Act.

SCHEDULE

Conveyancing (Amendment).

SCHEDULE 4—*continued.*
**AMENDMENTS TO PART XXIII OF THE CONVEYANCING ACT,
1919—*continued.***
(2) Section 197—

Omit the section, insert instead :—

Official
searches.

197. (1) Where a requisition that complies with subsection (2) is lodged in the office of the Registrar-General for a search to be made in respect of matters registered or recorded in that office pursuant to any provision of the Registration of Deeds Act, 1897, the Real Property Act, 1900, or the Conveyancing Act, 1919, affecting or relating to the title to any land, the Registrar-General shall—

- (a) cause the required search to be made;
- (b) cause to be made and filed in his office a certificate specifying full and correct particulars of the result of the search; and
- (c) issue an office copy of that certificate to the person who lodged the requisition.

(2) A requisition under subsection (1) complies with this subsection if—

- (a) where the land to which the requisition relates is under the provisions of the Real Property Act, 1900—the requisition complies with regulations made under that Act; or
- (b) in any other case—the requisition complies with regulations made under this Act.

SCHEDULE

Conveyancing (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART XXIII OF THE CONVEYANCING ACT,
1919—*continued.*

(3) Where—

- (a) a person purchases or disposes of land in reliance on the correctness of an office copy issued under subsection (1) (c), to him or to some person on his behalf; and
- (b) as a result of an error in, or omission from, that office copy he suffers loss or damage in so acting,

he may recover compensation in proceedings under the Claims against the Government and Crown Suits Act, 1912.

(4) Where a solicitor acts for a person referred to in subsection (3) and in so acting relies on the correctness of an office copy so referred to, that person has no cause of action against the solicitor for any loss or damage suffered as a result of an error in, or omission from, that office copy.

(5) A person employed in the office of the Registrar-General is guilty of a misdemeanour—

- (a) if he commits, or is party or privy to, any fraudulent act in relation to a certificate or office copy referred to in subsection (1);
or
- (b) if he is wilfully negligent in the making of, or otherwise in relation to, such a certificate or office copy.

Conveyancing (Amendment).

SCHEDULE 4—continued.
**AMENDMENTS TO PART XXIII OF THE CONVEYANCING ACT,
1919—continued.**

(6) Notwithstanding anything in this section, a person may make any search in the office of the Registrar-General that he could have made if this section had not been enacted.

(7) Where an office copy of a certificate is issued under subsection (1) (c), or was issued under the section that this section replaces, the Registrar-General may, without keeping any copy or record thereof, destroy the certificate, and any document that relates to the certificate, after six years have elapsed since the issue of the office copy of the certificate.

Sec. 4.
SCHEDULE 5.
**AMENDMENTS TO THE CONVEYANCING ACT, 1919, BY WAY
OF STATUTE LAW REVISION.**

(1) Section 19 (2) (c)—

Omit the paragraph, insert instead :—

(c) This subsection does not apply in respect of a person under mental disability.

SCHEDULE

Conveyancing (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO THE CONVEYANCING ACT, 1919, BY WAY
OF STATUTE LAW REVISION—*continued.*

(2) Section 19 (3)—

Omit “the prescribed application”, insert instead
“application in the form approved under that Act”.

(3) Section 19 (3)—

Omit “entries in the register-book”, insert instead
“recordings in the Register kept under that Act”.

(4) Section 64 (2)—

After “subsection (1)” where firstly occurring, insert
“or deposited before the commencement of the Con-
veyancing (Amendment) Act, 1972, pursuant to
section 53 (2) (e)”.

(5) Section 66A (2)—

Omit the subsection, insert instead:—

(2) Where a person whose consent to or request
for the execution of a trust for sale, or the exercise
of a power of sale, of any property would, but for
this subsection, be required in a disposition is a minor
or is under mental disability, his consent or request
is not, in favour of a purchaser, necessary for the
execution of the trust or the exercise of the power but
the trust may not be executed or the power exercised
without—

(a) where that person is a minor—the consent
of his parent or testamentary or other
guardian;

Conveyancing (Amendment).

SCHEDULE 5—*continued.*
**AMENDMENTS TO THE CONVEYANCING ACT, 1919, BY WAY
OF STATUTE LAW REVISION—*continued.***

- (b) where that person is under mental disability
—the consent of the person charged by law
with the management and care of his
property; or
- (c) where the relevant consent referred to in
paragraph (a) or (b) cannot be obtained—
the consent of the Court.

(6) Section 88B (3) (a)—

After “or”, insert “any”.

Sec. 4.
SCHEDULE 6.
**AMENDMENT TO THE CONVEYANCING ACT, 1919, BY WAY
OF METRIC CONVERSION.**
Section 88C (2) (a) —

Omit “three inches”, insert instead “76 millimetres”.

SCHEDULE

Conveyancing (Amendment).

SCHEDULE 7.

Sec. 5.

AMENDMENT TO THE REGISTRATION OF DEEDS ACT, 1897.

Section 8 (ii)—

Omit “, then such Judge or Registrar-General or other person shall refuse to complete such certified copy by certifying the same”, insert instead “and is not a deed signed and attested as provided by section 38 (1B) of the Conveyancing Act, 1919, then such Judge or Registrar-General or other person shall refuse to administer an oath pursuant to section 7”.

SCHEDULE 8.

Sec. 6.

TRANSITIONAL PROVISIONS.

1. The provisions of section 88B of the Conveyancing Act, 1919, as enacted immediately before the day appointed under section 2 (4) in respect of Schedule 2 (Schedule 2 (1), (8) and (9) excepted) continue to apply to and in respect of a plan of subdivision approved by a council before that day notwithstanding the amendments made to that section of that Act by this Act.

2. Section 197 of the Conveyancing Act, 1919, as amended by this Act, applies to and in respect of an office copy issued under that section as enacted immediately before the commencement of Schedule 4 (2), and to loss or damage suffered before that day, in the same way as it applies, as so amended, to an office copy issued under that section, and to loss or damage suffered, on and after that day.
